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INT-05 L-03 NSAE-00 NSC-05 PA-01 AID-05 SS-15
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00
OMB-01 AF-08 ARA-06 EA-07 NEA-10 /130 R

DRAFTED BY COMM/BIEPR/OTP:ASTOLER:JVM
APPROVED BY EB/OT/TA:DJ DUNFORD
STR:MSMITH
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-----181537Z 104309 /56

R 180059Z MAR 77
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA
INFO USMISSION GENEVA
USDEL MTN GENEVA

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E.O. 11652: N/A

TAGS:ETRD, GATT, CA

SUBJECT:U.S. DEL REPORT OF ARTICLE XIX CONSULTATIONS WITH
CANADA ON CANADIAN RESTRICTIONS ON IMPORTS OF APPAREL AND
OTHER TEXTILE PRODUCTS

REFS: (A) OTTAWA 4503, NOVEMBER 10, 1976
(B) OTTAWA 75, JANUARY 10, 1977

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1. SUMMARY. U.S. AND CANADIAN DELS MET ON MARCH 9 IN
WASHINGTON FOR ANOTHER ROUND OF CONSULTATIONS ON CANADA'S
GLOBAL QUOTAS ON APPAREL AND DOUBLE-KNIT FABRIC IMPORTS
AND NOW DEFUNCT SURTAX ON POLYESTER FILAMENT YARN IMPORTS.
CONSULTATIONS WERE HELD PURSUANT TO PROVISIONS OF GATT
ARTICLE XIX:2. THE U.S. DEL REMINDED CANDEL THAT AT
LAST XIX BILATERAL ON JANUARY 10, CANADIANS HAD INDICATED

THAT THEY WOULD RESPOND TO OUR COMPENSATION REQUESTS AT THIS MEETING. CANDEL REACTION TO COMPENSATION CONCEPT WAS EVEN MORE NEGATIVE THAN IN PAST AND THEIR ARGUMENT INCLUDED NUMEROUS POINTS NOT RELEVANT TO ARTICLE XIX ACTIONS. AT END OF CONSULTATIONS U.S. DEL STATED THAT A NUMBER OF POINTS OF DISAGREEMENT WERE SO BASIC AS TO BE INCAPABLE OF JOINT RESOLUTION AND THAT IN VIEW OF THIS IMPASSE, U.S. NOW HAD NO ALTERNATIVE BUT TO RESERVE OUR POSITION, REFLECT ON CANADIAN STATEMENTS AND CONSIDER UNILATERAL ACTION TO RESTORE BALANCE OF CONCESSIONS UPSET BY CANADA'S ACTIONS. END SUMMARY.

2. CHAIRMAN U.S. DEL (SMITH/STR) BEGAN CONSULTATIONS WITH BRIEF STATEMENT REGARDING U.S. REQUESTS FOR COMPENSATION GIVEN CANADA AT EARLIER MEETINGS TO WHICH THEY HAD PROMISED A RESPONSE. SMITH ASKED IF CANADIANS WERE PREPARED TO GIVE US THEIR REACTION TO THE COMPENSATION REQUESTS AT THIS TIME. CANDEL RESPONDED THAT, IN GENERAL, THEY BELIEVED THAT IT WAS INCUMBENT ON THE U.S. TO DEMONSTRATE THAT U.S. TRADE HAD BEEN INJURED BY CANADA'S ACTIONS BEFORE COMPENSATION COULD BE CONSIDERED. CHAIRMAN CANDEL (ARTHUR) ADDED THAT THERE WERE ALSO CERTAIN ACTIONS UNDERWAY IN CANADA (PRESUMABLY ANTI-DUMPING AND TEXTILE AND CLOTHING BOARD REVIEWS) WHICH WOULD HAVE TO RUN THEIR COURSE PRIOR TO CANADIAN CONSIDERATION OF OUR REQUESTS.

3. ARTICLE XIX-TEXTURED POLYESTER FILAMENT YARNS: IN TREATING THE SURTAX IN EFFECT ON CERTAIN OF THESE YARNS LIMITED OFFICIAL USE

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DURING THE PERIOD JULY 8 - DECEMBER 23, 1976, ARTHUR STATED THERE WAS: (1) NO PROOF OF DAMAGE TO U.S. TRADE; (2) ONLY 15 PERCENT OF YARNS IN THIS CATEGORY IMPORTED FROM THE U.S. HAD BEEN SUBJECT TO THE VARIABLE SURTAX; AND (3) ONLY 24,000 DOLLARS IN SURTAXES HAD BEEN COLLECTED. FURTHER, ARTHUR MAINTAINED THAT U.S. EXPORTERS HAD BENEFITED FROM THE HIGHER PRICES OF YARNS DUE TO THE SURTAX (AT OUR NOVEMBER 10 CONSULTATIONS, CANADIANS SAID U.S. MNC'S HAD ADJUSTED PRICES UPWARD TO MEET SURTAX THRESHOLD PRICE). LASTLY, CANADA'S ANTI-DUMPING TRIBUNAL HAD FOUND INJURIOUS DUMPING OF THIS PRODUCT FROM THE U.S. - WHICH IS ALSO THE PRICE LEADER. AS A RESULT OF ALL THESE FACTORS AND THE TEMPORARY DURATION OF THE MEASURE, CANDEL INDICATED PROBLEMS IN ACCEPTING PRINCIPLE OF COMPENSATION.

4. U.S. DEL ASKED IF THIS MEANT THAT NO COMPENSATION WOULD BE FORTHCOMING. CANADIANS RESPONDED THAT UNTIL U.S. CAN DEMONSTRATE ACTUAL INCIDENCE OF INJURY -- WHICH

IN THEIR VIEW WAS AN ESSENTIAL REQUIREMENT -- CANADA
COULD NOT OFFER COMPENSATION TO THE U.S.

5. ARTICLE XIX-DOUBLE-KNIT FABRICS: IN DISCUSSION OF
DOUBLE-KNIT FABRIC QUOTA, CANDEL MADE AN ARGUMENT AGAINST
COMPENSATION SIMILAR TO THE CASE FOR YARNS. CANDEL
MAINTAINED THAT THE QUOTA'S IMPOSITION WOULD INCREASE
U.S. DOUBLE-KNIT EXPORTS TO CANADA BOTH ABSOLUTELY AND
RELATIVELY. ACCORDING TO CANDEL, NO REQUESTS TO IMPORT
FABRICS UNDER QUOTA FROM THE U.S. HAVE YET BEEN DENIED
AND ALTHOUGH THE QUOTA LEVEL NOW EXTENDED FOR THREE YEARS
WITH A DECREASE IN THE FIRST YEAR IN THE QUOTA LEVEL OF
600,000 LB, IT WOULD IN THE CANADIAN VIEW, BE PREMATURE
TO COME TO CONCLUSIONS ABOUT THE EFFECT ON U.S. EXPORTS
TO CANADA. ASKED ABOUT THEIR DEFINITE POSITION ON
COMPENSATION, CANDEL SAID THEY WERE PREPARED TO LEAVE
THE MATTER OPEN BUT WOULD NOT MOVE ON OUR PROPOSALS IN
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THE ABSENCE OF EVIDENCE OF TRADE DAMAGE.

6. ARTICLE XIX-APPAREL QUOTAS: TURNING TO THE
RESTRICTIONS ON APPAREL, ARTHUR STRESSED THE "INTERIM"
NATURE OF THE QUOTAS PENDING THE TCB'S FINAL REPORT
DUE IN JULY. IN ADMINISTERING THE QUOTAS CANDEL SAID A
GOOD PERCENTAGE OF HARDSHIP AND HIGH FASHION ALLOWANCES
HAD GONE TO IMPORTERS SUPPLIED FROM THE U.S. U.S. DEL
RESPONDED BY STATING THAT IN OUR INITIAL MEETING ON
APPAREL QUOTAS CANADA HAD QUESTIONED THE NEED FOR
COMPENSATION BECAUSE THE QUOTAS WERE JUSTIFIED AND ONLY
"INTERIM" IN NATURE; THE U.S. HAD NO SUBSTANTIAL SUPPLIER
INTEREST; AND 45 PERCENT OF U.S. EXPORTS OF APPAREL TO
CANADA BENEFITTED FROM THE DISC. IN RESPONSE TO THESE
ARGUMENTS U.S. DEL INDICATED THAT WE VIEW COMPENSATION
AS AN ESSENTIAL ELEMENT OF "AGREEMENT" IN THE MEANING
OF ARTICLE XIX:3. IN ADDITION, THE U.S. HAD A SUBSTANTIAL
INTEREST AS EXPORTER OF THESE ITEMS TO CANADA AND WAS
DEFINITELY AN "AFFECTED CONTRACTING PARTY" UNDER ARTICLE XIX.
FURTHER, IF CANADA CONSIDERS DISC UNFAIR THERE ARE OTHER
MEANS TO DEAL WITH IT IN THE GATT. THE QUESTION OF DISC IS
IRRELEVANT TO ARTICLE XIX ACTIONS. THE U.S. THEREFORE
MAINTAINED THAT COMPENSATION WAS NECESSARY. THE U.S.
DEL TOLD CANDEL THAT IN THE ABSENCE OF COMPENSATION WE
COULD ONLY CONSIDER UNILATERAL MEASURES TO REDRESS THE
BALANCE OF CONCESSIONS.

7. AT THIS POINT CANDEL REACTED STRONGLY TO WHAT THEY
REFERRED TO AS THE "DOCTRINAIRE" U.S. APPROACH IN SEEKING
TO BASE RETALIATION OR CLAIMS FOR COMPENSATION ON TECHNICAL
PRINCIPLE AND INDICATED THAT THEY VIEWED SUCH ACTIONS AS

DANGEROUS PRECEDENTS FOR THE FUTURE. RATHER THEY REITERATED, THE U.S. SHOULD AGREE TO PROOF OF INJURY TO EXPORTS AS THE CRITERION FOR ACTION. THEY REFUSED (IN THE CASE OF APPAREL) TO ACCEPT OUR CONCEPT OF "SUBSTANTIAL INTEREST" AS WELL AS OUR READING OF "AFFECTED CPS" WITHIN LIMITED OFFICIAL USE

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ARTICLE XIX. LASTLY, THE CANDEL WOULD NOT ACCEPT THE U.S. CONTENTION THAT THE IMPOSITION OF SURTAXES AND QUOTAS HAD THE EFFECT OF REDUCING THE VALUE OF CONCESSIONS PREVIOUSLY MADE BY CANADA.

8. RESPONDING TO THE CANADIAN ATTACK ON THE U.S. POSITION, U.S. DEL FELT CONSTRAINED TO STATE THAT OUR DISAGREEMENTS WITH CANADA WERE SO FUNDAMENTAL ON THE QUESTIONS OF "SUBSTANTIAL INTEREST", DAMAGE TO PREVIOUS CONCESSIONS, NEED TO PROVE INJURY TO U.S. EXPORT INTERESTS, AND THEREFORE ON THE ENTIRE CONCEPT OF COMPENSATION THAT THE U.S. WOULD RESERVE ITS POSITION ON THESE MATTERS AND HAD NO ALTERNATIVE BUT TO CONSIDER UNILATERAL ACTION TO RESTORE THE BALANCE OF CONCESSIONS UPSET BY CANADA'S ACTIONS ON TEXTILES.

COMMENT:

FOLLOWING THIS LATEST IN A SERIES OF ARTICLE XIX CONSULTATIONS WITH CANADA, U.S. DEL IS UNANIMOUSLY CONVINCED THAT THERE IS ALMOST NO HOPE OF REACHING AGREEMENT WITH CANADA ON QUESTION OF COMPENSATION UNDER PRESENT CIRCUMSTANCES. U.S. DEL BELIEVES WE NOW HAVE NO ALTERNATIVE BUT TO SERIOUSLY CONSIDER WITHDRAWAL OF U.S. CONCESSIONS IN ACCORDANCE WITH ARTICLE XIX:3(A). WHEN OUR POSITION IS MORE CONCRETELY DEFINED, WE WILL INFORM CANADA OF OUR INTENT.

ACTION REQUESTED (FOR GENEVA):

TPSC AGENCIES WOULD APPRECIATE MISSION'S VIEWS OR INFORMATION ON POSSIBLE GATT PRECEDENTS RESPECTING ARTICLE XIX ACTIONS, PARTICULARLY ON THE ISSUES: (1) PROOF OF EXPORT INJURY REQUIREMENTS AND (2) "SUBSTANTIAL INTERESTS AS EXPORTERS."

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Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXTILES, DIPLOMATIC DISCUSSIONS, IMPORT CONTROLS
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Sent Date: 18-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE060086
Document Source: CORE
Document Unique ID: 00
Drafter: ASTOLER:JVM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770093-0660
Format: TEL
From: STATE
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Line Count: 226
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Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
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Office: ORIGIN COME
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 OTTAWA 4503, 77 OTTAWA 75
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 21-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3064770
Secure: OPEN
Status: NATIVE
Subject: U.S. DEL REPORT OF ARTICLE XIX CONSULTATIONS WITH CANADA ON CANADIAN RESTRICTIONS ON IMPORTS OF APPAREL AND OTHER TEXTILE PRODUCTS
TAGS: ETRD, EPAP, CA, US, GATT
To: OTTAWA
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/05fcedb5-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009